

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9710 Financial Organizations (IITA Section 1501)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.9710 Financial Organizations (IITA Section 1501)

- a) General Definition. The term "financial organization" is defined in IITA Section 1501(a)(8)(A) to mean *any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, investment company, or any person which is owned by a bank or bank holding company. For the purpose of this Section a "person" will include only those persons which a bank holding company may acquire and hold an interest in, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 USC 1841), except where interests in any person must be disposed of within certain required time limits under the Bank Holding Company Act of 1956.* This definition constitutes an exclusive and exhaustive list of the types of organization that are "financial organizations" under the Illinois Income Tax Act.

- b) Entities Engaged in Financial Organization Activities and Other Activities. For purposes of this Section, an entity that is classified as a "bank" under subsection (e) of this Section; as a "bank holding company" under subsection (f) of this Section; or as a person owned by a bank or bank holding company under subsection (g) of this Section, is a "financial organization" regardless of whether the entity is predominantly engaged in the business activities characteristic of a financial organization. In order for any other entity to be characterized as a "financial organization" in any tax year, the entity must be predominantly engaged in the business activities of a financial organization during the year. For this purpose, an entity engaged in business activities of a financial organization, as well as other business activities in the same tax year, is predominantly engaged in the business activities of a financial organization during that year only if more than 80% (50% in the case of a sales finance company under subsection (d)(10) of this Section) of the entity's gross income, averaged over a period of three years, which includes the current tax year and the immediately preceding two tax years, is derived from the business activities characteristic of one or more of the categories of financial organization defined in this Section for which the entity otherwise qualifies. For purposes of this subsection, gross income shall include only amounts that are received in the ordinary course of the entity's regular business activities and that are included in net income under the Illinois Income Tax Act. For purposes of determining whether an entity is predominantly engaged in the business activities of a financial organization when an entity is formed in a current tax year or in its immediately preceding tax year, only the years for which the entity is in existence will be used in determining whether the entity meets the 80%

test (or 50% test in the case of a sales finance company under subsection (d)(10) of this Section).

- 1) Income which results from transactions outside the ordinary course of an entity's regular business activities is not taken into account for the purposes of the gross income test. For example, amounts received from the sale of an entity's headquarters shall be disregarded, whether or not the gain is characterized as business income.
- 2) The classification of an entity as a "financial organization" under the IITA is relevant to how the business income of the entity shall be apportioned to Illinois under IITA Section 304(c). The treatment of items of income that are not included in apportionable business income is not affected by such classification, and such items are therefore disregarded for purposes of the gross income test. For example, interest received on United States Treasury obligations is excluded from Illinois base income, and accordingly is disregarded for purposes of determining whether the business income of an entity should be apportioned using the financial organization formula. Similarly, dividends received by a corporation shall be disregarded to the extent the dividends are deducted from federal taxable income under section 243 of the Internal Revenue Code or are subtracted in the computation of Illinois base income under IITA Section 203(b)(2)(O).
- 3) In the case of a sale or disposition of any asset (whether tangible or intangible, and whether the asset is part of the taxpayer's stock in trade) that occurs in the ordinary course of an entity's regular business activities, only the net gain shall be taken into account for purposes of the gross income test. Thus, for example, gross income from the sale of inventory is equal to its gross receipts minus the cost of goods sold; while gross income from the sale of stock is equal to the sales price minus any brokerage commission and minus the taxpayer's basis in the stock. If gross income from a transaction is negative, the loss shall not be considered for purposes of the gross income test.
- 4) Leasing Activities. For purposes of the IITA and the Internal Revenue Code, a "finance lease" is treated as an extension of credit, rather than as a true lease. In a finance lease, the lessor is treated as a creditor, and the lessee is treated as the owner of the leased asset entitled to any deduction for depreciation allowed under section 167 of the Internal Revenue Code. For purposes of this Section, a finance lease shall be treated as a loan or other extension of credit, rather than as a lease, regardless of how the transaction is characterized for any other purpose, including the purposes of any regulatory agency to which the lessor is subject.
- 5) In applying the gross income test to an entity engaged in the businesses of more than one of the types of organization defined in subsection (d) of this Section, "gross income from financial services" shall include gross income derived from all services characteristic of any specific defined type of organization for which the entity qualifies. For example:
 - A) Selling and exchanging currency is a characteristic service only of banks. Accordingly, "gross income from financial services" of an entity

which qualifies as a bank under subsection (d)(1) of this Section, and as a safe deposit company under subsection (d)(6) of this Section, includes both income from trading in foreign currency and safe deposit box rentals. However, "gross income from financial services" of an entity which qualifies as a safe deposit company, but not as a bank, does not include income from trading in foreign currency.

- B) A taxpayer which meets all other qualifications of a sales finance company and also of a small loan company, and that derives 40% of its gross income from transactions characteristic of a sales finance company and 35% of its gross income from transactions characteristic of a small loan company is not a financial organization because it does not meet either the 50% test for sales finance companies nor the 80% test applicable to other types of financial organization. If, however, the taxpayer derives 45% of its gross income from transactions characteristic of a sales finance company and 36% of its gross income from transactions characteristic of a small loan company, it would not be a sales finance company because it does not meet the 50% test, but it would be a financial organization under the 80% test.
- 6) IITA Section 1501(a)(8)(D) provides that an entity *that is a "financial organization" that engages in any transaction with an affiliate shall be a "financial organization" for all purposes of the Act.* Accordingly, in applying the gross income test, an entity's transactions with a person to which it is related (including transactions with a member of the entity's unitary business group which are eliminated in combination under Section 100.3320(d) of this Part) shall be treated in the same manner as transactions between the entity and an unrelated person, subject in all cases to the authority of the Department under IITA Section 404 to make such adjustments as are necessary to properly reflect each party's Illinois business activities.
- c) Some of the types of organizations listed in subsection (a) of this Section are defined by State or federal statutes. The remaining types of organization are terms frequently used in other states' laws to refer to entities engaged in the same businesses as the entities in one or more of the types defined in Illinois or federal law. An entity defined as a bank or a bank holding company, or that is owned by a bank or bank holding company, under subsection (e), (f) or (g) of this Section, is a financial organization regardless of its actual business activities. For any other entity, notwithstanding the title or characterization of the entity for purposes of any other law, the entity is a "financial organization" for purposes of the IITA only if that entity is predominantly engaged in a business which is identical in all material respects to the characteristic business of an entity within one or more of the types of organization defined in Illinois or federal law. In order for an entity's business to be identical in all material respects to the business of one of the defined types of organization, the entity must:
- 1) provide substantially all of the characteristic services provided by entities in the defined type of organization; and
 - 2) be subject to regulation by the Illinois or federal agency (if any) with authority over entities in the defined type of organization or by the equivalent authority (if

any) established under the laws of the entity's state or country of formation or of its commercial domicile. However, "sales finance companies", as defined in subsections (d) (10) (A) and (B) of this Section are not required to be regulated by any state or federal authority.

d) Application to Defined Types of Financial Organization. This subsection lists the types of financial organization defined in Illinois or federal law and describes the characteristic business of each type as provided in the relevant Illinois or federal statutes. The references to Illinois State and federal statutes and authorities in this subsection shall be construed to refer to any predecessor to the current statute or authority, whenever appropriate.

1) Entities engaged in the business of a "bank". The term "bank" includes any entity described in subsection (e) of this Section. In addition, for purposes of categorizing an entity that does not come within the scope of subsection (e) of this Section, the term "bank" means an entity predominantly engaged in the business activities characteristic of an entity which has been issued a charter by the Commissioner of Banks and Real Estate under 205 ILCS 5/13 or that has been given a certificate of authority to commence banking by the Comptroller of the Currency under 12 USC 27. The terms "savings bank", "industrial bank" and "cooperative bank" are sometimes used in the laws of other states to refer to entities engaged in the same business as a "bank" as defined in Illinois or federal law. The term "private banker" means an unincorporated bank, conducted as a partnership of individuals or as an individual proprietorship. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether an entity is engaged in the business of a "bank" for purposes of the IITA shall be made pursuant to the following standards:

A) Characteristic Services. The Illinois and federal statutes providing for the formation of banks state that the characteristic activities of banks are accepting deposits, making loans, discounting evidences of debt, and buying and selling exchange. (See 205 ILCS 5/3; 12 USC 24; and section 581 of the Internal Revenue Code.) In order to be engaged in a business identical in all material respects to the business of a "bank," an entity formed under the laws of another state or of a foreign country as a bank, savings bank, industrial bank, or cooperative bank must engage in each of these characteristic financial services of a bank. Thus, for example, an entity that does not accept deposits is not engaged in the business of a bank. For purposes of applying the 80% of gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a bank include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;

- iii) fees and gains realized from buying and selling exchange, including foreign currency;
- iv) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- v) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a bank include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; and interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. Illinois State banks are subject to regulation by the Commissioner of Banks and Real Estate (see 205 ILCS 5/48), while national banks are subject to regulation by the Comptroller of the Currency (see 12 USC 27(b)(2)). These entities qualify as banks under subsection (e) of this Section regardless of their business activities. In order to qualify as a bank, an entity that is not a bank within the meaning of subsection (e) of this Section must be regulated by the authority (if any) equivalent to the Commissioner of Banks and Real Estate or the Comptroller of the Currency having regulatory jurisdiction within the entity's state or country of formation or commercial domicile.
- 2) Entities engaged in the business of a "trust company". The term "trust company" means a corporation organized under the laws of the State of Illinois for the purpose of accepting and executing trusts [205 ILCS 620/1-5.11], and that has received a certificate of authority to accept trusts from the Commissioner of Banks and Real Estate under 205 ILCS 620/2-4.
- A) Characteristic Services. A trustee performs services as a fiduciary on behalf of the trust's beneficiaries. A trustee is entitled to compensation for expenses incurred on behalf of the trust and to reasonable compensation for services rendered (see 760 ILCS 5/7). Under Illinois law, a trustee may continue an unincorporated business on behalf of the trust in certain circumstances (see 760 ILCS 5/4.23 and 4.24). A trustee may act as an advisor or manager of a mutual fund in which trust funds are invested, without having to reduce or waive its compensation for such services when provided to a trust (see 760 ILCS 5/5.2). However, the trustee is not entitled to any profit from any business it conducts on behalf of a trust or beneficiary, but only to compensation for services rendered to the trust. Accordingly, the gross income from characteristic services of a trust company shall include only trustees' fees or other compensation receivable for services rendered as a trustee on behalf of trusts. Amounts received for services provided other than as a trustee, such as fees received as an advisor or manager of a mutual fund in which trust funds are invested, are not gross income from characteristic services of a trust company.

- B) Regulation. A trust company conducting business within Illinois is subject to the Corporate Fiduciary Act [205 ILCS 620]. Some types of regulated entities, such as national banks, are authorized by law to engage in trust activities (see 12 USC 92a). Any entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.
- 3) Entities engaged in the business of a "savings bank". The term "savings bank" means a taxpayer which is predominantly engaged in the business of an entity that is either chartered as a federal savings bank under the Home Owners' Loan Act (12 USC 1462 and 1464(a)) and whose investments comply with the guidelines of 12 USC 1464(c) or of an entity which has been issued a certificate of organization by the Commissioner of Savings and Loan Associations under the Savings Bank Act [205 ILCS 205/3007] and that, as required by 205 ILCS 205/1009, maintains at least 60% of its total assets in qualifying "domestic savings and loan association" assets described in section 7701(a)(19) of the Internal Revenue Code. The qualifying assets listed in Section 7701(a)(19) are cash, federal and municipal obligations, loans secured by deposits or shares in the lender, residential real estate loans, educational loans, and related investments. The terms "bank", "savings and loan association", "building and loan association", "industrial bank" and "cooperative bank" are sometimes used in the laws of other states to refer to entities engaged in the same business as a "savings bank" as defined in Illinois or federal law. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether the entity is engaged in the business of a "savings bank" for purposes of the IITA shall be made pursuant to the following standards:
- A) Characteristic Services. The business of a savings bank consists principally of acquiring the savings of the public and investing in loans (section 7701(a)(19)(B) of the Internal Revenue Code). In general, qualifying loans are related to residential real estate. An entity that does not take deposits from the public and invest the deposited funds primarily in qualifying loans to the public is not a savings bank for purposes of the IITA. For purposes of applying the 80% of gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a savings bank include:
- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
 - ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
 - iii) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
 - iv) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a savings bank include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. No entity is a savings bank for purposes of the IITA unless it is subject to regulation by the Commissioner of Banks and Real Estate under the Savings Bank Act [205 ILCS 205/1003], the Office of Thrift Supervision (12 USC 1461), or the appropriate authority of another state responsible for regulating savings banks.
- 4) Entities engaged in the business of a "land bank". The term "land bank" was defined in federal law to mean a federally chartered association organized to make loans on farm security at low interest rates as governed by 12 USC, ch. 23 (Farm Credit System). Under the Agricultural Credit Act of 1987 (P.L. 100-233), the federal land banks were merged with the Federal Intermediate Credit Banks which had also been created under the Farm Credit System. Under current law, the surviving entities are exempt from state income taxation (see 12 USC 2098).
- A) Characteristic Services. Congress established the federal land banks as cooperatives to encourage farmer and rancher ownership and control over a system of credit for agriculture. The characteristic service of a land bank is making loans to farmers. Gross income from characteristic services of a land bank include application and origination fees, points, interest, late payment fees and other charges received in connection with loans to farmers and ranchers.
 - B) Regulation. Federal land banks are not subject to Illinois taxation. A land bank that was not created under federal statute must be subject to any regulation by any authority equivalent to the Farm Credit System regulation as may exist in the state or country of incorporation or commercial domicile of the land bank.
- 5) Entities engaged in the business of a "safe deposit company". The term "safe deposit company" means an entity licensed by the Department of Financial Institutions under the Safety Deposit License Act [240 ILCS 5/22] to engage in the business of renting or permitting the use of, for compensation, safety deposit boxes, safes, vaults or other facilities for the safekeeping of personal property (see 240 ILCS 5/2). The Safety Deposit License Act does not apply to banks, savings and loans, credit unions, warehouses, or grain storage companies (see 240 ILCS 5/3).
- A) Characteristic Services. A safe deposit company provides facilities for the safekeeping of personal property in safes or vaults, as compared to warehouses. Gross income from the characteristic services of a safe deposit company includes rental income or similar charges for safe deposit boxes.

B) Regulation. Safe deposit companies doing business in Illinois must be licensed by the Department of Financial Institutions. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

6) Entities engaged in the business of a "savings and loan association". The term "savings and loan association" means a federal savings and loan association chartered under the Home Owners' Loan Act of 1933 (12 USC 1462 and 1464(a)) whose investments comply with the guidelines of 12 USC 1464(c) or a savings and loan association organized under the Illinois Savings and Loan Act of 1985 [205 ILCS 105/2-6] and whose investments comply with the requirements of 205 ILCS 105/5-1 through 5-16. In particular, 205 ILCS 105/5-3 provides that savings and loan associations must generally make their assets available to make loans to their members secured by the members' shares or for residential real estate purchase, construction and related matters under 205 ILCS 105/5-2. The Internal Revenue Code provides special rules for savings and loan associations, which are defined in section 7701(a)(19) of the Internal Revenue Code as depository institutions that invest at least 60% of their assets in cash, federal and municipal obligations, loans secured by deposits or shares in the lender, residential real estate loans, educational loans, and related investments. The terms "bank", "savings bank", "building and loan association", and "cooperative bank" are sometimes used in the laws of other states or of other countries to refer to entities engaged in the same business as a "savings and loan association" as defined in Illinois or federal law. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether the entity is engaged in the business of a "savings and loan association" for purposes of the IITA shall be made pursuant to the following standards:

A) Characteristic Services. The business of a savings and loan association consists principally of acquiring the savings of the public and investing in loans (section 7701(a)(19)(B) of the Internal Revenue Code). An entity that does not take deposits and invest primarily in qualifying loans is not a savings and loan association for purposes of the IITA. For purposes of applying the gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a savings and loan association include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- iv) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a savings and loan association include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. No entity is a savings and loan association for purposes of the IITA unless it is subject to regulation by the Office of Banks and Real Estate under the Savings Bank Act [205 ILCS 105/7-1], the Office of Thrift Supervision (12 USC 1462), or the appropriate authority (if any) of another state responsible for regulating savings and loan associations.
- 7) Entities engaged in the business of a "credit union". Federal credit unions that have received a charter under 12 USC 1754 are exempt from state income taxation (see 12 USC 1768). Under present law, only "cooperative, non-profit" credit unions may be incorporated under the Illinois Credit Union Act or permitted to do business in Illinois (see 205 ILCS 305/1.1 (defining "credit union") and 7 (permitting credit unions chartered in other states to do business in Illinois)). Under current law, a credit union doing business in Illinois is most likely exempt from Illinois Income Tax pursuant to IITA Section 205(a) and 12 USC 501(a) and (c)(14). 12 USC 1753(5) and 205 ILCS 305/2(2)(b) each require an entity applying for permission to organize as a credit union to define the class of persons entitled to membership.
- A) Characteristic Services. 12 USC 1752(a)(1) provides that a federal credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes and 12 USC 1757(7) requires a federal credit union to invest its funds in loans to its members, bank accounts, government securities and in other credit unions. 205 ILCS 305/1.1 defines "credit union" to mean a *cooperative, non-profit association, incorporated for the purposes of encouraging thrift, creating a source of credit at a reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social conditions*, and 205 ILCS 305/59 allows credit unions to invest only in loans to members, bank accounts, government securities and other credit unions. The characteristic services of a credit union involve taking interest-paying deposits from its members and making loans to its members. For purposes of applying the gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a credit union include:
 - i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans to members; and
 - ii) service charges and early withdrawal or other penalties received in connection with deposit accounts.

Examples of items of income that are not gross income from the characteristic services of a credit union include interest and other income from loans to non-members; rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. In order for an entity to qualify as a credit union, an entity must be subject to regulation by any appropriate authority in the state of organization, and the class of persons entitled to membership in the entity must be defined by law or approved by the appropriate state authority.
- 8) Entities engaged in the business of a "currency exchange". The term "currency exchange" means an entity licensed by the Director of Financial Institutions under the Currency Exchange Act [205 ILCS 405/4] *for purposes of engaging in the business of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money for a consideration or selling or issuing money orders in the entity's own name* [205 ILCS 405/1].
- A) Characteristic Services. Currency exchanges cash checks and other evidences of money for the general public, and may issue money orders. Currency exchanges are not permitted to accept any form of deposit or bailment of money (see 205 ILCS 405/3). The gross income from characteristic services of a currency exchange is the fees or other charges for cashing checks or issuing money orders. Interest or other income earned from investment of funds received from the issuance of money orders during the period between the issuance of a money order and its clearance is not gross income from a characteristic service of a currency exchange.
 - B) Regulation. A currency exchange doing business in Illinois must be licensed by the Director of Financial Institutions and meet certain bonding requirements to protect its customers. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.
- 9) Entities engaged in the business of a "small loan company". The term "small loan company" means an entity licensed by the Director of Financial Institutions under the Consumer Installment Loan Act [205 ILCS 670/1] for the purpose of making loans in a principal amount not exceeding \$25,000. Small loan companies are required to disclose the terms of their loans pursuant to specific statutory requirements or in conformity with the federal Truth in Lending Act (see 205 ILCS 670/16 (referencing 15 USC 1601)). The predecessor of the Consumer Installment Loan Act, the Small Loans Act (Ill. Rev. Stat., ch. 74, par. 27 (1933)), was held to apply only to lenders, and not to persons selling goods or services on a credit or installment basis. (See, e.g., *Wernick v. National Bond and Investment Co.*, 276 Ill. App. 84 (1934).)

- A) Characteristic Services. Small loan companies are permitted to make loans not exceeding an aggregate principal amount of \$25,000 to any obligor and for terms not exceeding 121 months. A credit or installment sale of goods or services is not a characteristic service of a small loan company. Gross income from the provision of the characteristic services of a small loan company includes loan application and origination fees, interest, late payment charges and similar amounts realized in connection with loans not exceeding the principal amount of \$25,000 and for terms not exceeding 121 months. Amounts received or accrued in connection with any loan for a principal amount in excess of \$25,000 or for a term in excess of 121 months are not gross income from the provision of the characteristic services of a small loan company. Finally, because 205 ILCS 670/21 provides that the Consumer Installment Loan Act does not apply to persons making loans to business associations or corporations, or to sole proprietors of businesses for the purpose of carrying on or acquiring such businesses, amounts received in connection with such business loans are not gross income from the provision of the characteristic services of a small loan company.
 - B) Regulation. A small loan company operating in Illinois must be licensed by the Director of Financial Institutions. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state. In all cases, the entity must comply with the regulations issued by the Board of Governors of the Federal Reserve System under the Truth in Lending Act.
- 10) Entities engaged in the business of a "sales finance company". The term "sales finance company" has the meaning provided in subsection (d)(10)(A) or (B):
- A) Under IITA Section 1501(a)(8)(C)(i), the term "sales finance company" means an entity *primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing*. For purposes of this subsection (d)(10)(A), a "customer receivable" means:
 - i) *A retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act [205 ILCS 660/2], the Retail Installment Sales Act [815 ILCS 405/2.6 and 2.7], or the Motor Vehicle Retail Installment Sales Act [815 ILCS 375/2.5];*
 - ii) *An installment, charge, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a deferred payment price payable in one or more installments subsequent to the sale;*

- iii) *The outstanding balance of a contract or agreement described in subsection (d)(10)(A)(i) or (ii) of this Section; or*
- iv) *A loan, or balance under a loan, made by a lender for the express purpose of funding purchases of tangible personal property or services by the borrower.*

A customer receivable need not provide for payment of interest on deferred payments. A sales finance company may purchase a customer receivable from, or make a loan secured by a customer receivable to, the seller or lender in the original transaction or from or to a person who purchased the customer receivable directly or indirectly from that seller or lender.

Example 1: A manufacturer sells a product to a retailer. Payment is due 7 days after issuing the sales invoice. An account receivable is recorded when the invoice is issued. The receivable would constitute a customer receivable.

Example 2: An entity purchases or otherwise acquires customer receivables or finance leases. The entity sells those customer receivables or finance leases to a third party and enters into an agreement to service such receivables or finance leases in exchange for a fee. The purchase, sale and/or servicing of such receivables or finance leases is a business of a "sales finance company".

- B) Under IITA Section 1501(a)(8)(C)(ii), the term "sales finance company" also means a corporation meeting each of the following criteria:

- i) *The corporation must be a member of an "affiliated group" within the meaning of section 1504(a) of the Internal Revenue Code, determined without regard to section 1504(b) of the Internal Revenue Code;*
- ii) *More than 50% of the gross income of the corporation for the taxable year must be interest income derived from qualifying loans. A "qualifying loan" is a loan made to a member of the corporation's affiliated group that originates customer receivables or to whom customer receivables originated by a member of the affiliated group have been transferred, to the extent the average outstanding balance of loans from that corporation to members of its affiliated group during the taxable year do not exceed the limitation amount for that corporation. The "limitation amount" for a corporation is the average outstanding balances during the taxable year of customer receivables originated by all members of the affiliated group. If the average outstanding balances of the loans made by a corporation to members of its affiliated group exceed the limitation amount, the interest income of that corporation from qualifying loans shall be equal to its interest income from loans to members of its affiliated group times a*

fraction equal to the limitation amount divided by the average outstanding balances of the loans made by that corporation to members of its affiliated group;

- iii) *The total of all shareholder's equity (including, without limitation, paid-in capital on common and preferred stock and retained earnings) of the corporation plus the total of all of its loans, advances, and other obligations payable or owed to members of its affiliated group may not exceed 20% of the total assets of the corporation at any time during the tax year; and*
- iv) *More than 50% of all interest-bearing obligations of the affiliated group payable to persons outside the group determined in accordance with generally accepted accounting principles must be obligations of the corporation.*

Example 3: In connection with the conduct of its business, A Corporation either originates customer receivables (as defined in subsection (d)(10)(A) of this Section), or is transferred customer receivables from one or more of its affiliates. B Corporation, a wholly-owned subsidiary of A and a member of its affiliated group, conducts business exclusively in State X, its commercial domicile. B issues commercial paper and other debt obligations and uses the proceeds to make loans to A or other members of the affiliated group. B Corporation derives more than 50% of its gross income from interest on making "qualifying loans" to A or other members of the affiliated group. Assuming B also meets the tests in subsections (d)(10)(B)(iii) and (iv) of this Section, B would constitute a "sales finance company" as defined in ILTA Section 1501(a)(8)(C)(ii).

- C) **Characteristic Services.** A "sales finance company" is defined by its characteristic services in subsections (d)(10)(A) and (B) of this Section. A company satisfies the primary test of subsection (d)(10)(A) of this Section if more than 50% of its gross income is from its characteristic services.
 - D) **Regulation.** There is no requirement that a sales finance company that meets the definition provided in subsection (d)(10)(A) or (B) of this Section be subject to license or regulation by any state or federal authority.
- 11) Entities engaged in the business of an "investment company". The term "investment company" means an entity that comes within the meaning of 15 USC 80a-3 and is predominantly engaged in the business of investing, reinvesting and trading in securities.
- A) **Characteristic Services.** In the Investment Company Act of 1940, 15 USC 80a-3 defines an investment company as an entity engaged in the business of investing, reinvesting and trading in securities. Accordingly, the characteristic services of an investment company are the raising of capital from investors in order to purchase capital securities of other

entities. Gross income from the characteristic services of an investment company includes interest, dividends and gains from sales of securities.

- B) Regulation. In order to be characterized as an investment company under the IITA, an entity doing business in the United States must be registered as an investment company with the Securities and Exchange Commission under the Investment Company Act of 1940. Any entity that is not doing business in the United States must be subject to the equivalent authority (if any) in its country of formation or commercial domicile.
- e) The term "bank" includes the following entities, regardless of whether the entity is engaged in the characteristic business of a bank as described in subsection (d)(1) of this Section. An entity described in this subsection (e) is a bank even if it qualifies as a financial organization under one of the provisions of subsection (d) of this Section:
- 1) any entity that is regulated by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation.
 - A) An "entity regulated by the Comptroller of the Currency under the National Bank Act" means a national banking association formed under 12 USC 21.
 - B) An "entity regulated by the Federal Reserve Board" means a member of the Federal Reserve System under the provisions of 12 USC 222 or 12 USC 321.
 - C) An "entity regulated by the Federal Deposit Insurance Corporation" means an insured depository institution under 12 USC 1814.
 - 2) any federally or State chartered bank operating as a credit card bank. A "credit card bank" is the common term for an entity that comes within the definition of "bank" for purposes of the Bank Holding Company Act of 1956 (12 USC 1841(c)(1)), but that is excluded from being treated as a bank under 12 USC 1841(c)(2)(F).
- f) Entities Engaged in the Business of a "Bank Holding Company". The term "bank holding company" means an entity that directly or indirectly owns, controls or has power to vote 25% or more of any class of voting securities of any bank or of any other bank holding company (see 12 USC 1841(a)), and which is registered with the Board of Governors of the Federal Reserve System under Section 1844(a) of the Bank Holding Company Act of 1956 (12 USC 1844(a)).
- g) Special Rule for Persons Owned by a Bank or Bank Holding Company. The term "financial organization" under the Illinois Income Tax Act includes any person that is owned by a bank (within the meaning of subsection (d)(1) of this Section or subsection (e) of this Section) or by a bank holding company (within the meaning of subsection (f) of this Section). For purposes of this provision, the term "person" includes only those persons in which a bank holding company may acquire and hold an interest, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 USC

1841) and Regulation Y promulgated thereunder by the Board of Governors of the Federal Reserve System (12 CFR 225), and does not include any person that must be disposed of within certain required time limits under the Bank Holding Company Act of 1956. Under this provision, an entity that would not otherwise be a "financial organization" is deemed to be a financial organization for any period during which it is owned by a bank or bank holding company. For example, prior to the enactment of Public Law 106-102, 12 USC 1843(c)(8) authorized bank holding companies to own insurance companies in certain circumstances. 12 USC 1843(c)(8) allows a bank holding company that owned an insurance company prior to November 12, 1999, to continue to own that insurance company. An insurance company owned by a bank holding company is a "financial organization" for purposes of the IITA, even though the insurance company would not otherwise be a financial organization. The fact that an entity that is not owned by a bank holding company would be a financial organization under this provision if it were owned by a bank holding company, or that the entity in the past may have been owned by a bank holding company and therefore characterized as a financial organization, is irrelevant to the determination of whether the entity is a financial organization.

- h) Effective Dates and Elections. Public Act 89-711 amended the definition of "financial organization" in IITA Section 1501(a)(8) by adding the definition of "bank" in IITA Section 1501(a)(8)(B) and the definition of "sales finance company" in IITA Section 1501(a)(8)(C).
 - 1) Application of IITA Section 1501(a)(8) to taxable years beginning on or before December 31, 1996. The General Assembly declared in IITA Section 1501(a)(8)(D) that the definitions of the terms "bank" and "sales finance company" in IITA Section 1501(a)(8)(B) and (C) are *declaratory of existing law and apply retroactively for all tax years beginning on or before December 31, 1996*. No other definitions were changed. Accordingly, except as provided in this subsection (h), the interpretations of the statutory definitions contained in subsections (a) through (g) apply retroactively and for all purposes to all taxable years.
 - 2) For taxable years beginning on or before December 31, 1996, Public Act 89-711 provides that the definitions of "bank" and "sales finance company" shall apply to all original returns; to all amended returns filed within 30 days after the effective date of the Act; to all math error notices issued by the Department under IITA Section 903(a); to all Notices of Deficiency issued by the Department under IITA Section 904(a); to all notices of denial of refund claims issued under IITA Section 909(e); and to all assessments of erroneous refunds made under IITA Section 912.
 - A) Public Act 89-711 imposes no time limit for the filing of an original return applying its provisions to taxable years beginning on or prior to December 31, 1996. Accordingly, taxpayers may file original returns claiming financial organization status under the amended definitions of "bank" and "sales finance company" at any time, provided that such returns are filed within the applicable statute of limitations period and meet all other relevant requirements of the IITA.

- B) Taxpayers required to file amended returns in order to claim financial organization status for a taxable year beginning on or prior to December 31, 1996, were required to do so on or before March 17, 1997, which was 30 days after the enactment of Public Act 89-711.
- C) In the case of a taxpayer that had claimed financial organization status on an original or amended return and whose status as a financial organization was denied by the Department, IITA Section 1501(a)(8)(D) provides that the amended definitions of "bank" and "sales finance company" apply to the Notice of Deficiency or notice of denial of refund claim issued by the Department after review of such return.
 - i) If the Notice of Deficiency or notice of denial has not become final, a taxpayer with a matter pending before the Office of Administrative Hearings of the Illinois Department of Revenue for a particular taxable year may raise as an issue the taxpayer's status as a "bank" or "sales finance company" by the making of a motion in conformance with the rules on motion practice as set forth in 86 Ill. Adm. Code 200.185.
 - ii) If the Notice of Deficiency or notice of denial has become final, and the taxpayer is not contesting the Department's action in the courts under the Administrative Review Law [735 ILCS 5/Art. III] or the State Officers and Employees Money Disposition Act [30 ILCS 230], the taxpayer must have filed a timely amended return as set forth in subsection (h)(2)(B) of this Section in order to assert a claim that it qualifies as a "bank" or "sales finance company" under the amended definitions.
 - iii) A taxpayer with a matter pending before the courts of this State for a particular taxable year must request treatment as a "bank" or "sales finance company" by the making of a motion in conformance with the rules of the court.
- 3) Election under IITA Section 1501(a)(8)(E). IITA Section 1501(a)(8)(E) provides that, *for all taxable years beginning on or before December 31, 1996, a taxpayer that falls within the definition of a "financial organization" under Section 1501(a)(8)(B) or (C) of the IITA, but who does not fall within the definition of a "financial organization" under the Proposed Regulations issued by the Department of Revenue on July 19, 1996 (20 Ill. Reg. 9488) may irrevocably elect to apply the Proposed Regulations for all of those years as though the Proposed Regulations had been lawfully promulgated, adopted, and in effect for all of those years.*
 - A) In order to support a claim for refund, the election must have been filed by March 17, 1997. Procedures for making an election which would support a claim for refund were published in Emergency Rule 100.9710 (21 Ill. Reg. 2969).

B) A taxpayer who has filed an original or amended return for any taxable year beginning on or before December 31, 1996, as a non-financial organization and that wishes to elect to be bound by the July 19, 1996, proposed rules solely for the purpose of preserving its return position, and not for purposes of claiming a refund for any year, may file an election document meeting the following requirements:

i) The election document must state on the first page "Financial Organization Election to Apply Proposed Rules Under Public Act 89-711 -- No Refund Claim".

ii) The election document must be filed prior to the issuance of any Notice of Deficiency or notice of claim denial that is based in whole or in part on the retroactive application of Public Act 89-711 to treat the taxpayer as a financial organization.

iii) The election document must list all members of the unitary business group to whom the election applies. The election shall be binding on all such members, whether or not listed, and the Department may enforce such election against such members. In addition, no refund claimed after the effective date of Public Act 89-711 shall be allowed to the extent such refund results from the application of the July 19, 1996, proposed rules to any such member.

C) All elections to apply the July 19, 1996, proposed rules, whether made by amended return or by an election document, shall be sent to the following address:

Deputy General Counsel - Income Tax
Legal Services Office - Room 5-500
Illinois Department of Revenue
P.O. Box 19014
Springfield, Illinois 62794-9014

D) Effect of election.

i) Effect on "banks" as defined in IITA Section 1501(a)(8)(B). Public Act 89-711 expanded the definition of the term "bank" to include entities described in subsection (e) of this Section, without regard to the actual business activities of the entity. A taxpayer governed by an election under this subsection (h) must be engaged in the business of a "bank" as described in subsection (d)(1) of this Section in order to be characterized as a bank. For example, under IITA Section 1501(a)(8)(B), a "credit card bank" is characterized as a "bank" even though a credit card bank is prohibited from accepting deposits from the public. A credit card bank governed by an election under this subsection (h) therefore cannot be a "bank" under subsection (d)(1) of this Section. Note, however, that a credit card bank governed by such an election may qualify as a financial organization under some other provision of this Section; in particular, a credit card bank may be engaged in

the business of a sales finance company as defined in the subsection (i)(3)(D)(ii) of this Section.

- ii) Effect on "sales finance companies" as defined in IITA Section 1501(a)(8)(C). Public Act 89-711 expanded the definition of "sales finance company" to include entities that buy, or make loans secured by, installment agreements or charge agreements of corporations and businesses and to include entities which are primarily engaged in the business of a sales finance company. An entity governed by an election under this subsection (h) will be a sales finance company only if: it is engaged in the business of buying, or making loans secured by, installment agreements and charge agreements arising from retail purchases for personal, family or household use; more than 80% of its gross income is derived from transactions characteristic of a financial organization; and it meets the other requirements of subsection (d)(10) of this Section.
 - iii) An election made under Section 1501(a)(8)(E) applies only to taxable years beginning on or before December 31, 1996. For all subsequent taxable years, the provisions of Section 1501(a)(8) as amended in Public Act 89-711 and interpreted in subsections (a) through (h) of this Section shall apply.
 - iv) Section 1501(a)(8)(E) provides that the election applies *to those members of the taxpayer's unitary business group who are ordinarily required to apportion business income under the same subsection of Section 304 of the IITA*. An election made by one or more such members is binding on all such members, whether or not they expressly joined in the election, and the Department may enforce such election either directly or by offsetting any refund payable to the taxpayer as the result of the election by any underpayment of any other taxpayer to whom such election also applies to the extent such underpayment results from the making of the election.
- i) Effective January 1, 2000, Public Act 91-535 amended the definition of the term "sales finance company" in IITA Section 1501(a)(8)(C). The General Assembly declared the definition of the term "sales finance company" in Public Act 91-535 to be declaratory of existing law. Accordingly, except as provided in this subsection (i), the interpretation of the term "sales finance company" shall apply retroactively and for all purposes to all taxable years.
- 1) The definition of "sales finance company" provided by Public Act 91-535 shall apply to all original returns; to all amended returns; to all math error notices issued by the Department under IITA Section 904(a); to all Notices of Denial of refund claims issued under IITA Section 909(e); and to all notices of erroneous refunds made under IITA Section 912.

- A) Public act 91-535 imposes no time limit for the filing of an original or amended return applying its provisions to a particular taxable year. Accordingly, taxpayers may file original or amended returns claiming financial organization status under the amended definition of "sales finance company" at any time, provided that such returns are filed within the applicable statute of limitations period and meet all other relevant requirements of the IITA.
- B) In the case of a taxpayer that had claimed financial organization status on an original or amended return and whose status as a financial organization was denied by the Department:
 - i) If the Notice of Deficiency or Notice of Denial has not become final, a taxpayer with a matter pending before the Office of Administrative Hearings of the Illinois Department of Revenue for a particular taxable year may raise as an issue the taxpayer's status as a "sales finance company" by making of a motion in conformance with the rules on motion practice as set forth in Section 100.185 of this Part.
 - ii) If the Notice of Deficiency or Notice of Denial has become final, and the taxpayer is not contesting the Department's action in the courts under the Administrative Review Law [735 ILCS 5/Art. III] or the State Officers and Employees Money Disposition Act [30 ILCS 230], the taxpayer must have filed a timely amended return as set forth in subsection (h)(2)(B) of this Section in order to assert a claim that it qualifies as a "sales finance company" under the amended definition.
 - iii) A taxpayer with a matter pending before the courts of this State for a particular taxable year must request treatment as a "sales finance company" by the making of a motion in conformance with the rules of the court.

(Source: Amended at 27 Ill. Reg. 13536, effective July 28, 2003)